

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Central Illinois Light Company d/b/a)	
AmerenCILCO)	Docket No. 09-0306
)	
Proposed general increase in electric delivery)	
service rates.)	
)	
Central Illinois Public Service Company d/b/a)	
AmerenCIPS)	Docket No. 09-0307
)	
Proposed general increase in electric delivery)	
service rates.)	
)	
Illinois Power Company d/b/a AmerenIP)	Docket No. 09-0308
)	
Proposed general increase in electric delivery)	
service rates.)	
)	
Central Illinois Light Company d/b/a)	
AmerenCILCO)	Docket No. 09-0309
)	
Proposed general decrease in gas delivery service)	
rates.)	
)	
Central Illinois Public Service Company d/b/a)	
AmerenCIPS)	Docket No. 09-0310
)	
Proposed general increase in gas delivery service)	
rates.)	
)	
Illinois Power Company d/b/a AmerenIP)	Docket No. 09-0311
)	
Proposed general increase in gas delivery service)	
rates.)	

MOTION TO STRIKE

The People of the State of Illinois (“the People” or “AG”), by and through Lisa Madigan, Attorney General of the State of Illinois, and the Citizens Utility Board (“CUB”), pursuant to 83 Ill. Adm. Code Sec. 200.190, move to strike portions of Ameren Illinois Utilities (“Ameren,” the “Company,” or “AIU”) Direct Testimony on Rehearing of Mr. Craig D. Nelson. In support of this motion, AG-CUB state as follows:

1. On June 15, 2010, the Commission issued a Notice of Commission Action in which the Commission granted in part and denied in part both the Application for Rehearing of the Ameren Illinois Utilities (“Ameren,” the “Company,” or “AIU”) filed on May 28, 2010 and the Application for Rehearing of the Illinois Industrial Energy Consumers (“IIEC”) filed on June 1, 2010. The Commission also denied the joint Application for Rehearing of the Citizens Utility Board and the People of the State of Illinois filed on June 1, 2010.

2. In its June 15, 2010 Notice of Commission Action, the Commission specifically described what it would consider on rehearing regarding the issue of accumulated depreciation reserve. The four questions on rehearing for accumulated depreciation reserve areas follows:

- (1) What is the **appropriate application/interpretation of 83 Ill. Adm. Code 287.40 and 220 ILCS 5/9-211** in the context of adjustments to **accumulated depreciation reserve**?
- (2) **If an adjustment to accumulated depreciation reserve** is appropriate, **what methodology** should be employed in making the adjustment?
- (3) **To the extent that the Commission wants to alter** the manner that it adjusts **accumulated depreciation reserve, what, if any, steps must be taken** before doing so?
- (4) What is the **appropriate adjustment**, if any, to **accumulated depreciation reserve** in this proceeding (including any of the alleged “technical corrections”)?
- (a) What is the **appropriate valuation** of net plant at the end of February 2010?

June 15, 2010 Notice of Commission Action (“Rehearing Notice”) at 2 (emphasis added).

3. AG-CUB object to the portion of pre-filed direct testimony on rehearing of Ameren witness Craig D. Nelson (Ameren Exhibit 1.0RH) starting at page 2, line 23 through page 5, line 104. This testimony it is not in conformity with the Commission’s notice regarding accumulated depreciation reserve, is not appropriate for inclusion in the record on rehearing and should therefore be stricken.

4. Mr. Nelson's testimony on pages 2-5 references general ratemaking principles; requirements under the Public Utilities Act regarding "just and reasonable" rates; AIUs reliance on prior Commission orders and a legal interpretation of those orders; the AIUs "decisions in deciding to seek a pro forma adjustment for pension expense" in their direct case; actions taken by AIU management subsequent to the Commission's May 6, 2010 Order; and future actions the Companies may take if the Commission does not reverse its Order. Ameren Ex. 1.0RH at 2-5.

5. This testimony is inappropriate and should be stricken for several reasons. First, these issues clearly exceed the scope of the Commission's very targeted questions regarding the appropriate application/interpretation of one specific administrative rule and one statutory provision relating to accumulated depreciation and the methodology to employ in making that accounting adjustment. Second, this testimony is irrelevant to the issues identified in the Commission's rehearing notice. Third, Mr. Nelson offers inappropriate legal opinion testimony in purporting to inform the Commission of the legal parameters of the issue by arguing that the AIUs are entitled to rely on previous Commission decisions.

6. Mr. Nelson's testimony purporting to explain why the AIUs proposed certain pro forma adjustments in their direct cases has no place in this rehearing. The AIUs had ample opportunity to explain and justify their proposed adjustments in their direct case and, in fact, did so. The AIUs direct case is no longer at issue. The Commission has confined the issues to be reheard in its Rehearing Notice and AIUs "Reliance on Prior Orders," as Section III of Mr. Nelson's testimony is titled, is not one them. Whatever rationale the AIUs used to support their proposed adjustments in their direct case are now moot, irrelevant and beyond the scope of this rehearing.

7. Additionally, the fourth section of Mr. Nelson's testimony on pages 3-5, "Lack of Adherence to Prior Policies or Interpretations Creates Undue Impact," has no conceivable connection to the questions in the Commission's Rehearing Notice. By discussing the "impact to the Ameren Illinois Utilities" of the Commission's May 6, 2010 Corrected Order," the referenced testimony clearly exceeds the scope of the issues outlined in the Rehearing Notice. Further, this testimony amounts to nothing more than a thinly veiled threat that, if the Commission does not adopt the AIUs position, adverse consequences to customers will result. This cannot reasonably be considered within the scope of the questions in the Rehearing Notice and is simply not relevant to those questions.

8. Regarding legal argument, although Mr. Nelson prefaces his testimony by claiming that he is not offering an opinion on the legal significance of prior Commission orders, he goes on to discuss why he believes certain Commission orders are controlling in this instance. This discussion should be reserved for AIUs brief and is not appropriate opinion testimony.

9. It is a well-settled proposition that the rules of evidence generally prohibit the introduction of expert legal opinion testimony: "...expert opinions on purely legal questions of American law are not admissible for any purpose..." See *In re Initial Public Offering Sec. Litig.*, 174 F. Supp. 2d 61, 63 (S.D.N.Y. 2001)("The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law -- a kind of axiomatic principle.'" *United States v. Bodmer*, 342 F. Supp. 2d 176, 182, fn. 7 (S.D.N.Y. 2004), quoting Thomas Baker, *The Impropriety of Expert Witness Testimony on the Law*, 40 U. Kan. L. Rev. 325, 352 (1992).

10. Illinois courts follow this general rule excluding the introduction of expert legal opinion testimony. In *Mache v. Mache*, 218 Ill. App. 3d 1069 (1st Dist. 1991) (“*Mache*”), the Court explained the general standard applicable to expert opinion testimony in Illinois:

The modern standard of admissibility of expert testimony is whether the testimony will aid the trier of fact in its understanding of the facts presented at trial. (*Johnson v. Commonwealth Edison Co.* (1985), 133 Ill. App. 3d 472, 482, 478 N.E.2d 1057.) While an expert may express an opinion on an ultimate issue, expert opinions are generally not admissible on matters of which the trier of fact is knowledgeable unless the subject is difficult of comprehension and the testimony will aid the trier of fact in understanding it. (*McCormick v. McCormick* (1988), 180 Ill. App. 3d 184, 205, 536 N.E.2d 419.)
Id. at 1077.

Applying this standard, the Court in *Mache* held that proposed testimony, which applied facts to the relevant law, constituted a legal opinion that did not touch upon matters beyond the understanding or comprehension of the trial court and was properly excluded.

11. In this case, the Commission is fully aware of prior Commission decisions, their applicability to the facts in this case, and their legal significance, if any, and was well briefed on such matters during the 11-month rate case. Thus, not only is such testimony improper legal opinion, but is also objectionable as irrelevant to and beyond the scope of the issues on rehearing.

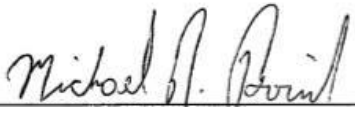
CONCLUSION

For the reasons discussed herein, AG-CUB respectfully request that the following direct testimony on rehearing be stricken:

- Ameren Exhibit 1.0RH at 2-5; lines 27-104

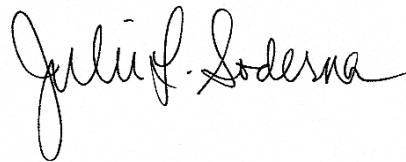
Respectfully submitted,

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